

**SUPERIOR COURT OF THE  
DISTRICT OF COLUMBIA CIVIL DIVISION**

JOHN DOE II, et al.

Plaintiffs,

v.

DISTRICT OF COLUMBIA, et al.

Defendants.

Civil Action No. 04-1002

Calendar 5 - Judge Judith Bartnoff

**SETTLEMENT AGREEMENT**

Subject to the following terms and conditions, the parties to the above-referenced action (hereinafter "the Parties") have resolved the matters in controversy between them, in consideration of the agreements set forth below; the Parties agree to compromise and settle the captioned case upon the following terms and conditions; and the Parties stipulate and agree to seek court approval of these terms and conditions as follows:

WHEREAS, the Superior Court for the District of Columbia approved Plaintiffs' Motion for Class Certification on September 18, 2004, pursuant to Rule 23(b)(2), defining the Class as "all persons arrested, detained, charged, and/or criminally prosecuted (including but not limited to 'no paper' dismissals) for underage possession or consumption of alcohol since April 9, 1997" (hereinafter "Plaintiffs," "the Class" or "the Class Members");

WHEREAS, Class Counsel has advised Class Representatives that (i) they have undertaken appropriate and adequate formal and informal discovery to assess the merits of the claims of Plaintiffs and the Class; (ii) they have evaluated the claims of Plaintiffs in light of applicable state and federal laws, and (iii) as a result of such activities described in (i) and (ii) above, they have concluded that the terms of this Proposed Settlement are fair, reasonable, and adequate, and no issue of law or fact has come to their attention that would cause them not to agree to this Proposed Settlement;

WHEREAS, Class Counsel has concluded, after investigation of the facts, in light of the applicable law, that it would be in the best interest of the class to agree to this Settlement Agreement to avoid the uncertainties of litigation and to assure a benefit to Plaintiffs, and further, that Class Counsel consider this Settlement Agreement to be fair, reasonable, and adequate, and in the best interest of the Class;

WHEREAS, arm's-length settlement negotiations have taken place between Class Counsel and Defendants, resulting in this Settlement Agreement;

NOW, THEREFORE, IT IS HEREBY AGREED, by, between, and among the parties that all claims for equitable relief which have been or could have been made on behalf of Plaintiffs related to the above described arrests, detentions, charges, and prosecutions are hereby settled, compromised, and dismissed on the following terms and conditions subject to the approval of the Court:

1. Service. Service of any information or documents required or necessitated by this Settlement Agreement shall be made on the following persons and to such other persons as they may designate in writing.

If upon Plaintiffs or their attorneys, by both e-mail and first-class mail to:

CAROL ELDER BRUCE  
K&L Gates LLP  
1601 K Street, N.W.  
Washington, D.C. 20006  
(202) 778.9426  
carol.bruce@klgates.com

If upon Defendants or their attorneys, by both e-mail and first-class mail to:

Ellen A. Efros  
Assistant Deputy  
Chief Equity Section I  
Civil Litigation Division  
Office of Attorney General for the District of Columbia  
441 4<sup>th</sup> St. N.W., Suite 600S  
Washington, D.C. 20001  
(202) 442-9886  
ellen.efros@dc.gov

2. Enforcement of Settlement Agreement. Any action to enforce this Settlement Agreement shall be commenced and maintained only in this Court. The parties hereby irrevocably submit to the exclusive jurisdiction of the Superior Court for the District of Columbia for any suit, action, proceeding or dispute arising out of or relating to this Settlement Agreement or the applicability of this Settlement Agreement. Solely for purposes of such suit, action, or proceeding, to the fullest extent they may effectively do so under applicable law, the parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

3. Entire Agreement. This Settlement Agreement constitutes the entire understanding and agreement between the Parties hereto with regard to the subject matter hereof, and is intended as the complete and exclusive statement of the agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements and negotiations (whether written or oral) thereto. This Settlement Agreement may not be modified or amended except in writing

signed by counsel for all the parties. All Exhibits attached hereto are incorporated herein by reference and made a part of this Settlement Agreement.

4. Successors and Assigns. This Settlement Agreement shall be binding upon and shall inure to the benefit of Plaintiffs and Defendants, and each of them, their successors, devisees, trustees in bankruptcy, debtors in possession, administrators, executors, representatives, and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiffs and their counsel shall be binding upon all members of the Class.

5. Release. Other than with respect to the obligations set forth herein, Plaintiffs fully release, forgive and discharge the District of Columbia, its officers, agents and employees for all claims for relief arising from or that could have been asserted by any plaintiff or class member in any forum under any theory of liability arising from or related to in any way the allegations of Plaintiffs' Complaint (including any request for attorney's fees and costs) including any such claims or lawsuits in any other proceeding or forum. This release covers any fees and costs in getting the Court to approve the settlement and in defending the settlement from any legal challenges.

6. No Admission of Liability. In entering into this settlement, there is no admission of liability by the District of Columbia or admission of any factual contentions that have been asserted by Plaintiffs in this litigation.

7. No Third Party Beneficiary Rights. No third party who is not an Individual Plaintiff or Class Member shall have any rights under the Settlement Agreement.

8. No Opt-Outs. No opt-outs from this Settlement Agreement are allowed.

9. Capacity and Authority. The undersigned representatives of the Parties certify that they are fully authorized to enter into and to execute the terms and conditions of this Settlement Agreement and to make such Settlement Agreement fully and legally binding upon and enforceable against the Party on whose behalf they have executed this Settlement Agreement. The individuals signing for the District of Columbia are its officials acting within the scope of their authority. The Parties stipulate, agree and warrant that they will not challenge or contest in any way the capacity or the authority of any party hereto to make the agreements, covenants, and stipulations herein.

10. No Creation of Rights. This Settlement Agreement creates no obligations or duties on the part of Parties other than as stated specifically in this Settlement Agreement. The Parties stipulate, agree, and acknowledge that nothing in this Settlement Agreement may be used by any person or entity for any purpose in any legal proceeding other than by Plaintiffs as stated specifically in this Settlement Agreement. An alleged violation of this Settlement Agreement shall not create a new, independent private right of action.

11. Amendments and Modifications. This Settlement Agreement may not be amended or modified in any respect other than by an agreement in writing signed by all Parties.

12. Construction. This Settlement Agreement shall be construed without regard to any presumption or other rule of law requiring construction against the party who caused it to have been drafted.

13. Governing Law. This Settlement Agreement shall be governed by and construed and enforced in accordance with the laws of the District of Columbia and enforceable in the Superior Court for the District of Columbia.

14. Non-Assignment. None of the obligations and duties of any Party set forth in this Settlement Agreement may be assigned or delegated to any other person without the express, prior written consent of all other Parties.

15. No Severability. This Settlement Agreement is not severable except with the express written consent of both parties.

16. Counterparts. Provided that all parties hereto execute a copy of this Settlement Agreement, the Settlement Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Executed copies of this Settlement Agreement may be delivered by facsimile transmission or other comparable means. This Settlement Agreement shall be deemed fully executed and entered into on the date of execution by the last signatory required hereby.

17. Application For Order Approving The Settlement Agreement. Class Counsel shall apply to the Court for preliminary approval of the Settlement Agreement within thirty (30) days of the execution of this Settlement Agreement. The proposed Application and Order to accompany such Application are attached hereto as Exhibit A.

18. Consideration. As consideration for this Settlement Agreement and as otherwise set forth in the proposed Order attached hereto as Exhibit B, Class Members shall receive the following relief:

- (a) The District of Columbia shall completely expunge all police and prosecution records within its control of the arrest, detention, charge, and/or prosecution of the Class for underage possession or consumption of alcohol between the effective date of the 1997 amendment to the predecessor statute to D.C. Code § 25-1002 (i.e., April 9, 1997) and the date of the May 2004 preliminary injunction issued by the Court in this case (i.e., May 19, 2004).
- (b) The District of Columbia shall request the expungement of records described above in the possession of the United States.
- (c) The District of Columbia shall not oppose the Court's sealing of all court records of the arrest, detention, charge, and prosecution of the Class for underage possession or consumption of alcohol between the effective date of the 1997 amendment to the predecessor statute to D.C. Code § 25-1002 (i.e., April 9, 1997)

and the date of the May 2004 preliminary injunction issued by the Court in this case (i.e., May 19, 2004).

- (d) The District of Columbia shall not oppose the Court's entry of declaratory relief providing that, with respect to any prior detention arising from a charge for underage possession or consumption of alcohol in the District of Columbia, each of the Class Members may state that he or she was not arrested in response to any question inquiring about any past arrests as provided in D.C. Code § 16-802(i).
- (e) The District of Columbia agrees that persons subject to Sections 18(a) – (d) above include any additional persons arrested and/or prosecuted for underage possession or consumption of alcohol after the date of the May 2004 preliminary injunction provided that Plaintiffs' Counsel identifies such persons and/or their criminal case numbers within 30 days of approval of this settlement.
- (f) Within sixty days after the Court gives final approval of the Settlement Agreement, and the exhaustion of any appeals, including any petitions for writ of certiorari to the U.S. Supreme Court, and if the settlement is upheld, Defendants shall compensate each of the nine representative Plaintiffs in the amount of \$2,500 per individual, representing a total amount of \$22,500, provided that the representative plaintiffs provide all documentation necessary to process payment including federal form W-9's at least 30 days prior to the scheduled payments.

19. Notice to the Class and Fairness Hearing. At the time of preliminary approval of the Settlement Agreement, the Court will schedule a hearing on the fairness of the Settlement Agreement pursuant to Rule 23(e). The Class shall be given notice of the Settlement Agreement and fairness hearing as follows:

- (a) Publication. Plaintiffs shall prepare the notice of the Settlement Agreement and fairness hearing for review and approval by Defendants' Counsel and include that notice in the motion for preliminary approval of the Settlement Agreement. Defendants shall then publish, at Defendants' expense, notice of the Settlement Agreement and fairness hearing by publication in a newspaper of general circulation in the District of Columbia of Defendants' choice, with Defendants to pay all such costs of notice.
- (b) Notice to the Class. The notice to the class of the Settlement Agreement shall inform the class of the terms of the settlement, the date of the fairness hearing, and the right of the class to object to the settlement and any deadlines governing the Court's consideration of the settlement, the fairness hearing and determination on whether final approval of the settlement shall be provided. Because there are no opt outs under the settlement, the notice need not provide information on how a class member may opt out of the settlement.
- (c) Class member objections. Any objection to the settlement must be submitted no less than 30 days prior to the fairness hearing. The objection must be a written statement to the Court, with copies to counsel for the parties, setting forth his or her objection. The

statement shall contain the class member's name, signature, address and telephone number along with a written statement of his or her objection(s) to the settlement providing the reasons for the objection(s). Class Counsel and Defendants' Counsel shall each file a response to such objections at least 15 days prior to the fairness hearing.

(d) Website Following Final Approval. Within one month after the Court grants final approval of the Settlement Agreement, the District shall publish notice of the Settlement Agreement on a non-interactive, static Internet or Extranet website ("the Website"), the content and location of which are to be determined.

20. Administration.

- (a) Following final approval of this Settlement Agreement, Plaintiffs' Counsel shall contact the alumni services departments of Georgetown University, American University, George Washington University, Howard University, Catholic University and the University of the District of Columbia to request publication of a notice alerting Class Members to the Settlement Agreement and the relief set forth in the proposed Order attached hereto as Exhibit B.
- (b) Following final approval of this Settlement Agreement, the District of Columbia shall be responsible for (i) ensuring the Website is maintained for a period of three years from the approval of the Settlement Agreement, and the exhaustion of any appeals including a petition for writ of certiorari to the U.S. Supreme Court, alerting the public to this Settlement Agreement and the relief set forth in the proposed Order attached hereto as Exhibit B; (ii) maintaining a confidential list of all Class Members; and (iii) providing written confirmation to a Class Member, upon request by that Class Member, that he or she is a Class Member for purposes of the relief set forth in the proposed Order attached hereto as Exhibit B. The point of contact for individual class members to request such relief shall be Robert Hildum, Deputy Attorney General, Public Safety Division, Office of the Attorney General of the District of Columbia or his designee. Provision of this relief will be subject to the provision of such reasonable proof of identity as the District may request.

21. Legal Fees and Expenses of Class Counsel. Defendants shall pay to Class Counsel attorneys' fees and expenses for work performed on behalf of, and benefits conferred upon, Plaintiffs and the Class in the amount of \$522,500, including the defense of the settlement. The parties agree that this is a reasonable amount of compensation for the work performed or to be performed by Class Counsel on behalf of Class Members. The District of Columbia will pay as attorney's fees: \$198,054.30 to Patton Group PLLC t/a Butzel Long Tighe Patton, PLLC (formerly "Tighe Patton Armstrong Teasdale, PLLC"); \$278,257.79 to Venable LLP; and \$46,187.96 to Bracewell & Giuliani LLP. These payments shall be made by Defendants in two equal installments. Within sixty days of the Order granting final approval of the Settlement Agreement, Defendants shall pay to each law firm identified above the amount of one-half of the payment due. On or before November 1, 2011, Defendants shall pay to each law firm identified above the second-half of the payment due together with 4% accrued interest from the date of this

agreement. Notwithstanding the foregoing payment dates, no payment obligation for attorney's fees and expenses is triggered until the exhaustion of any appeals including any petitions for writ of certiorari to the Supreme Court and the settlement is upheld provided that Plaintiffs' counsel provide all documentation necessary to process payment including federal form W-9's at least 30 days prior to the scheduled payments.

22. Dismissal and Continuing Jurisdiction. Following the Court's grant of final approval of the Settlement Agreement, the Court shall:

- (a) Enter the proposed Order attached hereto as Exhibit B, providing the relief set forth in Sections 18(a) – (d);
- (b) Dismiss the captioned case without prejudice; and

Retain continuing and exclusive jurisdiction over all matters relating to administration, consummation, enforcement, and interpretation of this Settlement Agreement and for any other necessary purpose for one year following final approval and the exhaustion of any appeals, including any petitions for writ of certiorari to the U.S. Supreme Court. At the end of this period the Court will dismiss the case with prejudice.

23. Cooperation in Seeking Court Approval. The Parties and their counsel shall cooperate in getting the Court to give approval to this Settlement Agreement as promptly as possible and to take all steps contemplated by this Settlement Agreement to effectuate this Settlement Agreement.

24. Joint Drafting. This Settlement Agreement shall be deemed to have been jointly drafted by the Parties.

25. Duty to Defend. Plaintiffs' Counsel agrees to defend the settlement from any legal challenge and shall not represent or give legal guidance to any entity or person seeking to or challenge or set aside the settlement.

26. Notice and Cure Provision. In any event of any alleged or actual systemic violation of the Settlement Agreement, Plaintiffs through counsel shall provide written notice of such to the District of Columbia through counsel. The District shall have 60 days to remedy any systemic violation prior to Plaintiffs seeking enforcement through a breach of contract claim.

27. Remedy in the Event of Breach. In the event of a breach of the agreement, Plaintiff's sole remedy shall be either through a motion to enforce the agreement or a breach of contract claim where the sole remedy shall be a request for specific performance or compliance with the terms of the Settlement Agreement.

[SIGNATURES ON NEXT PAGE]

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